INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
I. The Board's findings of fact	3
II. The Board's conclusions and order	5
III. The decision of the court below	6
Reasons for granting the writ	7
Conclusion	12
Appendix	13–27

CITATIONS

Cases:	
Aeronautical Lodge v. *Campbell*, 337 U. S. 521	10
Aluminum Ore Co. v. *National Labor Relations Board*, 131 F. 2d 485	8
Boston Herald-Traveler Corp. v. *National Labor Relations Board*, 223 F. 2d 58	7, 8
Brooks v. *National Labor Relations Board*, 348 U. S. 96	9
J. I. Case Co. v. *National Labor Relations Board*, 321 U. S. 332	9
National Labor Relations Board v. *Hekman Furniture Co.*, 207 F. 2d 561	8
National Labor Relations Board v. *The Item Co.*, 220 F. 2d 956, certiorari denied, 350 U. S. 836	8, 11
National Labor Relations Board v. *Jacobs Mfg. Co.*, 196 F. 2d 680	8
National Labor Relations Board v. *Leland-Gifford Co.*, 200 F. 2d 620	8
National Labor Relations Board v. *New Britain Machine Co.*, 210 F. 2d 61	8
National Labor Relations Board v. *Otis Elevator Co.*, 208 F. 2d 176	8

398083—56——1

Cases—Continued Page

National Labor Relations Board v. *Truitt Mfg. Co.*, 351 U. S. 149 11

National Labor Relations Board v. *Whitin Machine Works*, 217 F. 2d 593, certiorari denied, 349 U. S. 905 ..... 7, 8

National Labor Relations Board v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947 ..... 7, 8, 10

Taylor Forge & Pipe Works v. *National Labor Relations Board*, 234 F. 2d 227 8

Utica Observer Dispatch v. *National Labor Relations Board*, 229 F. 2d 575 8

Whitin Machine Works, 108 N. L. R. B. 1537 9

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*):

Section 8 (a) (1) 6

Section 8 (a) (5) 2

Section 8 (d) 2

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

F. W. WOOLWORTH CO.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on June 25, 1956, denying the Board's petition for enforcement of its order against F. W. Woolworth Co.

OPINIONS BELOW

The opinion of the court below (Appendix, *infra*, pp. 13–26) has not yet been reported. The findings of fact, conclusions of law, and order of the Board (R. 24–48, 57–68) are reported at 109 N. L. R. B. 196.

JURISDICTION

The judgment of the court below was entered on June 25, 1956 (Appendix, *infra,* p. 27). The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether a union, certified as the bargaining representative of employees in an appropriate unit, is entitled to obtain from the employer information as to the individual wage rates and hours worked by the employees in the bargaining unit, when it requests such data during the course of bargaining negotiations and again after execution of a collective agreement.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are as follows:

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and

confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *.

STATEMENT

I

THE BOARD'S FINDINGS OF FACT

The Retail Clerks Union, Local 1167, A. F. L. ("the Union"), was certified by the Board on March 22, 1951, as the exclusive collective bargaining representative of the retail store employees employed in respondent's store in San Bernardino, California (R. 2, 5). One year later, on March 11, 1952, respondent and the Union agreed upon their first collective bargaining contract to run for a 2-year term ending March 5, 1954 (R. 26; 8–15, 16). Section 5 of the contract established basic minimum wage rates for all employees. The establishment of the actual wage system, however, including the specification of the going wages, whether or not above the basic minimum, was reserved to respondent as among its "exclusive responsibilities" under the management prerogative clause found in Section 17. The contract contained no other reference or description of the actual wage rates except for a guarantee that "no employee suffer a reduction in wage rate on account of the signing of this agreement" (R. 9–10).

The contract further provided for wage reopening in mid-term, on March 7, 1953, for the express and limited purpose of making a "cost-of-living adjustment" in the basic minimum rate "at least" equal to the percent of change in the Bureau of Labor Statistics [B. L. S.] National Index, with the proviso that "a larger adjustment may be made by mutual agreement between the parties." These adjustments referred to the basic minimum rate only and did not affect the specific rate ranges or the rates actually paid (R. 26–27; 14–15). On the subject of hours, the agreement simply provided for daily and weekly overtime compensation geared to a 40-hour, 5½ day week (R. 9).

Contemporaneously with the execution of the contract on March 11, 1952, respondent, in response to the Union's request, furnished to it a list of all of the employees covered by the contract. Thereupon, "in order to have a complete picture as of the date of the Agreement," the Union wrote to respondent asking it to specify "the number of hours worked per week for each employee, also each employee's rate of pay the week ending prior to the effective date of the Agreement." Respondent did not reply to this letter (R. 28; 22, 81, 82).

There the matter rested until early in 1953 when the parties commenced negotiations for revision of the basic hourly rates to conform (at a minimum) to the changes in the B. L. S. National Index (R. 27, 58; 17).

The B. L. S. Index formula for the minimum increase required a raise of at least 1.42 cents per hour,

or roughly 57 cents for a 40-hour week, in the basic minimum rate. The Union asked for an increase of 5 cents per hour or $2 per week, and on March 13, respondent offered 2½ cents per hour or $1 per week (R. 27; 15–19, 82–87).

In the course of these negotiations, the Union renewed its request for the names, classification, rates and hours of the employees covered by the contract. It urged that the information was needed "for the intelligent and equitable administration of the Agreement" as well as for the negotiations then at hand. Respondent again refused. During the course of the wage negotiations in the following three months, including the meetings of April 13 and April 24, the Union continued to press for this information, but respondent persisted in its refusal to provide it (R. 28, 58; 20, 22, 82–88, 102).

On April 30, 1953, the Union notified respondent that it had accepted respondent's offer of March 13 to increase the basic minimum wage $1 per week (R. 27, 58; 20, 21, 99). A few days later, on May 5, 1953, the Union, by letter, repeated its request for the payroll information, but respondent again failed to reply (R. 28; 22, 87, 102).

II

THE BOARD'S CONCLUSIONS AND ORDER

The Board, noting that it had held consistently and with uniform court approval that "an employer is under a duty to accommodate a union's request for relevant wage information," concluded that re-

spondent's refusal to supply the data violated its bargaining obligation under the Act (R. 58–59). Observing that the Union had requested the data during the course of wage negotiations and again "to aid in the 'intelligent and equitable administration of the agreement,'" the Board stated that the employer should have furnished the data in both instances because of "the need of the union for such information in order to provide intelligent representation of the employees" (*ibid.*).

Accordingly, the Board ordered respondent to cease and desist from the unfair labor practice found and, affirmatively, to furnish the Union, upon request, the name, classification, hours worked, and wage rate of each employee in the appropriate unit, and to post appropriate notices (R. 63–64).[1]

III

THE DECISION OF THE COURT BELOW

The court below, setting aside the order of the Board, held that the Union was not "entitled to information highly personal to employees" in the absence of "a showing of reasonable need of the information to meet a condition" (*infra*, p. 19).

---

[1] The Board, by a divided vote, dismissed that portion of the complaint charging that respondent had further violated Section 8 (a) (5) and (1) by dealing directly with the individual employees on the question whether the payroll information should be disclosed and by instigating and sponsoring among its employees a union-shop deauthorization petition in derogation of the Union's exclusive collective bargaining status (R. 59–63, 65–67).

Noting that the contract reserved to management unilateral control over wages and hours, the court stated that "the relevancy of the demand with respect to wage increase negotiations was at no time demonstrated" (*infra*, p. 17). With respect to the Union's contention, sustained by the Board, that the data was needed "for the intelligent and equitable administration of the contract," the court below held that the Union must show specific need for specific data, and that "if the reason [for seeking the data] is not obvious, then he who asserts the claim should demonstrate to him against whom it is asserted some relevant particularity" (*infra*, p. 19).

REASONS FOR GRANTING THE WRIT

1. The decision of the court below conflicts with decisions of the Courts of Appeals for the First, Second, Fourth and Fifth Circuits, all of which have held without dissenting vote that the right of a union, as bargaining representative, to receive from the employer data as to the individual wage rates of the employees in the unit is not dependent upon the union's making a particularized showing of the relevancy of the data to a specific subject of bargaining negotiations. *Boston Herald-Traveler Corp.* v. *National Labor Relations Board*, 223 F. 2d 58, 60–63 (C. A. 1); *National Labor Relations Board* v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947, 949 (C. A. 2); *National Labor Relations Board* v. *Whitin Machine Works*, 217 F. 2d 593, 594 (C. A. 4), certiorari denied, 349 U. S. 905; *National Labor Relations Board* v. *The*

Item Co., 220 F. 2d 956, 958 (C. A. 5), certiorari denied, 350 U. S. 836.[2] Thus, the First Circuit has held that wage data has "presumptive relevance" to the issues of collective bargaining (*Boston Herald*, 223 F. 2d at 62–63);[3] the Second Circuit has ruled that such information "must be disclosed unless it plainly appears irrelevant" (*Yawman*, 187 F. 2d at 949); and the Fourth and Fifth Circuits have determined that the data "should not necessarily be limited to that which would be pertinent to a particular existing controversy" (*Whitin*, 217 F. 2d at 594; *Item*, 220 F. 2d at 958). The court below, without citing or attempting to distinguish these contrary authorities, has set aside the Board's order because "the relevancy of the [wage data] * * * was at no time demonstrated," and the union was under a duty to

---

[2] The same result, but without specific discussion of the "relevancy" issue, was reached by the Sixth Circuit in *National Labor Relations Board* v. *Hekman Furniture Co.*, 207 F. 2d 561, and by the Seventh Circuit in *Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485, 487. See also *National Labor Relations Board* v. *Leland-Gifford Co.*, 200 F. 2d 620, 624 (C. A. 1); *Utica Observer-Dispatch* v. *National Labor Relations Board*, 229 F. 2d 575, 576 (C. A. 2); *National Labor Relations Board* v. *Otis Elevator Co.*, 208 F. 2d 176 (C. A. 2); *National Labor Relations Board* v. *New Britain Machine Co.*, 210 F. 2d 61, 62 (C. A. 2); *National Labor Relations Board* v. *Jacobs Mfg. Co.*, 196 F. 2d 680, 684, (C. A. 2); *Taylor Forge & Pipe Works* v. *National Labor Relations Board*, 234 F. 2d 227 (C. A. 7).

[3] The conflict in views is clearly brought out by a comparison of Judge Magruder's opinion in *Boston Herald* with the opinion below.

"demonstrate to [respondent] * * * some relevant particularity" (*infra*, pp. 17, 19).[4]

2. Resolution of the question whether the Act entitles a bargaining representative to data embracing the wage rates of the employees it represents is of manifest practical importance in normal collective bargaining relationships, and, accordingly, in the administration of the Act. This question, apparently laid to rest by the uniform decisions of six courts of appeals (see pp. 7–8, *supra*), has now been reopened by the court below. Its frequent recurrence in bargaining negotiations is attested not only by the twelve cases which have reached the courts of appeals in the past five years, but also by the "multiplicity" of such cases before the Board (*Whitin Machine Works*, 108 N. L. R. B. 1537 at 1540).

3. In holding that the relevance of the wage data to bargaining negotiations could not be presumed and that it required demonstration (*infra*, pp. 18–19), the court below has overlooked the fact that knowledge of the wage rates actually being paid is necessarily relevant to bargaining for a minimum wage scale. In the instant case, while the Union at the time of the 1953 negotiations was aware of the minimum wage then in effect under the contract, it could not effectively determine whether and to what extent it should

[4] Insofar as the decision of the court below may turn on the court's view that the information sought invaded the privacy of individual employees (*infra*, pp. 16, 19), it is inconsistent with this Court's recognition in *Brooks* v. *National Labor Relations Board*, 348 U. S. 96, 103, and *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 338–339, that such individual rights are subordinated to the collective representative under the statute.

seek to raise that minimum without knowing the rates actually being paid. Without that information the Union could not tell, for example, whether the Company's offer to raise the minimum two and one-half cents would or would not actually raise any wages then being paid. We submit that the Second Circuit was manifestly correct in its observation that it would be "difficult to conceive a case in which current or immediately past wage rates would not be relevant during negotiations for a minimum wage scale or for increased wages." *National Labor Relations Board* v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947, 949.

As "it is of the essence of collective bargaining that it is a continuous process" (*Aeronautical Lodge* v. *Campbell*, 337 U. S. 521, 525), we submit that "the employer ought to know * * * without demonstration" (*infra*, p. 18) that the requested wage data is information relevant to the Union's performance of its role in the administration of the contract. Such information would provide a means of ascertaining whether union members were receiving minimum rates as required by the contract. Moreover, the Union would necessarily be interested in determining whether respondent's contractual authority to grant unilateral wage increases had resulted in unfair or inequitable wage distinctions based upon mistakes, hostility, favoritism, or any other discriminatory motivation. As the Fifth Circuit observed in the *Item* case, *supra*, 220 F. 2d at 959, "The right to grant merit increases without the consent of a statutory bargaining agent obviously should not imply the right to withhold information thereon, since such a rule might foster discrimination against union adherents in the

granting of merit increases, and thereby promote that industrial strife and unrest which the Act seeks to avoid." The information would likewise be a relevant aid to the Union in determining whether the wage system established by the contract operated well enough to justify the Union in continuing, in future contracts, to waive its right to bargain over wage adjustments above the minimum.

It may be suggested that the court of appeals recognized some of these possibilities but found the Union's request for the information defective for failure to specify a grievance (see *infra*, pp. 18–19). The defect in this reasoning, however, is that effective administration of an agreement requires acquisition and correlation of the data which will enable the parties to make intelligent determinations as to whether there is any occasion for grievance. In short, the presumption that wage information is relevant (if not, indeed, essential) to the proper performance of the functions entrusted to a bargaining representative is far from an artificial one; it is rooted in plain and practical realities of the process of collective bargaining.[5]

[5] Contrary to the suggestion of the court below, this Court's decision in *National Labor Relations Board* v. *Truitt Mfg. Co.*, 351 U. S. 149, does not require the Union to make a particularized showing of need (*infra*, p. 19). The distinction between a "wage data" case like this and a "financial data" case like *Truitt* was recognized by the Fourth Circuit in distinguishing its *Truitt* decision, later reversed, from its *Whitin* decision. See 224 F. 2d 869 at 874–875. This Court's reversal of the Fourth Circuit in *Truitt* would appear to require, *a fortiori*, reversal here, for the data requested in the instant case does not embrace matters of peculiarly managerial concern. The Union's interest in knowing the wage rates of the employees it represents arises directly out of the Union's status as bargaining representative.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
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DOMINICK L. MANOLI,
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National Labor Relations Board.

SEPTEMBER 1956.

APPENDIX

APPENDIX

APPENDIX

1. Opinion of the Court of Appeals

In the United States Court of Appeals for the Ninth Circuit

No. 14577—June 25, 1956

National Labor Relations Board, petitioner

v.

F. W. Woolworth Co., respondent

ON PETITION FOR ENFORCEMENT AND PETITION FOR REVIEW OF ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before Stephens, Fee and Chambers, *Circuit Judges*

Chambers, *Circuit Judge:*

Herein we have a question of whether the Woolworth Company must furnish certain payroll information to a representative of a clerk's union (hereafter called "local"), the collective bargaining agent for the employees of the company's store at San Bernardino, Calif.

The demand was for names, hours and wages of employees over a period immediately preceding the demand. The Woolworth Company refused and refuses to supply the requested information other than names of employees and initial classification.

The Labor Board has found an unfair labor practice and petitions here for the usual enforcement order.

Before setting forth the details of the controversy, we think it advisable to set forth hereafter as an ap-

pendix the entire wage agreement which is at the root of the succeeding events in the labor-management dispute. The agreement appears as appendix "A".

It will be noted in Section 21 that the two year agreement provided for a cost-of-living adjustment on March 7, 1953, of the basic minimum wage rate as contained in Section 5. Also in Section 17 one observes a provision for further adjustment by "mutual agreement between the parties." The management prerogative clause, Section 17, should be carefully read.

There appears to be no contention that management will not furnish the local the names of all employees on the payroll. Such information seems to have been made available to the satisfaction of the local.

But shortly after execution of the contract, the local wrote for the number of hours worked per week for each employee, also each employee's total pay and rate of pay for the week ending prior to the effective date of the agreement, which was March 5, 1952. The request was ignored.

Early in 1953, negotiations began for revision of the basic rates. One and 42/100ths cents per hour was required automatically on the standard of living index. The local asked for five cents. The company was offering two and one-half cents. During the negotiations the request was revived for the same wage information previously requested. It was urged that the information was needed "for the intelligent and equitable administration of the agreement." Later, during the negotiations the demand was repeated.

On April 30, 1953, the local accepted the company's offer of two and one-half cents or one dollar per week increase on the basic wage rates. On May 5, the local again wrote the company for the information. The request was refused by ignoring it. On June 18, the

local filed a complaint with the board alleging the refusal was an unfair labor practice. After a hearing, the board agreed.*

* See 29 U. S. C. A. § 158. The specific provisions of the section held to be violated were:

"§ 158. Unfair labor practices

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title; * * *

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title. * * *"

29 U. S. C. A. § 157 is as follows:

"§ 157. Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

29 U. S. C. A. 159 (a) is as follows:

"§ 159. Representatives and Elections.—Exclusive representative; employees' adjustment of grievances directly with employer

"(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment."

We believe that the company really makes three defenses: 1. An employer never has to give such information as was demanded here. 2. If in some cases such information must be furnished, it was not obligated to do so here. 3. The matter should have been submitted to arbitration.

In connection with contention (2), the company relies heavily on the management prerogative clause, Section 17 of the contract.

In view of our conclusion on the second contention, we do not reach squarely the first contention, but of course the arguments on either contention do overlap. In ruling on contention (2), we think much depends on how we read the recent case of *N. L. R. B.* v. *Truitt,* 100 L. Ed. (advance p. 575).

The facts of Woolworth are different. In Truitt the information sought was the company's financial condition. Bargaining was deadlocked. The company said it couldn't afford the union's wage demands. The union said, "Prove it." The Supreme Court held, under the circumstances, information of the company ordinarily private, had to be supplied. The majority opinion makes clear that the right is not a universal one and depends on each case's peculiar circumstances. What the "circumstances" are will have to be hammered out in successive cases before the Labor Board and the Courts of Appeal with further delineation eventually by the Supreme Court when the cases are "ripe" or conflicts in circuits become serious.

There are a number of cogent arguments that the employee should have a right of privacy on payroll information, absent his consent to disclosure. With his consent, it probably would always be the employer's duty to furnish the union information, unless the totality of the information was so voluminous as

to be unduly burdensome to prepare and would serve no possible useful purpose.

But here we have the question of the employee's representative, the local, by virtue of being the representative, and not because of any contract provision or any express authorization from those whom it represents, demanding the information. Woolworth contends that the board has here enunciated a "per se" right. We do not think the board intended to go that far, but its holding approaches it.

For the purposes of this opinion, we shall assume that in the posture of some negotiations with the employer concerning contracts and wages, the bargaining representative by virtue of his office may be entitled to the information requested and to receive it from the employer.

Here we reject the board's findings and conclusions on the ground we do not find a rational basis for them. During the 1953 negotiations, the sole subject of negotiation was wholly under Section 17 of the contract and concerned an adjustment of Section 5 basic rates. That was the only thing to negotiate about at the time. There seems to have been no contention that Woolworth could not pay the basic rate demanded by the union and still survive. The relevancy of the demand with reference to the wage increase negotiations was at no time demonstrated. It is agreed that at the time an employee began work the local was notified of the employment and of the employee's classification according to experience under Section 5. The contract, Section 17, gave management exclusive and absolute control over any incentive or bonus pay schedules. The amount of overtime work, if any, was obviously reserved to the employer.

But what of the demand made by the employee representative after the wage increase was satisfactorily concluded? The only ground ever expressly asserted was: "It is imperative that we have this information for the intelligent and equitable administration of the Agreement."

We do not hold that a request must painfully, laboriously or absolutely demonstrate in detail a relevancy, but we do believe that at sometime or someplace some specific relevancy should be asserted or facts should be shown whereby one could say that the employer ought to know anyway without demonstration the relevancy of the information to the relationship of the parties. It must be something more than Micawber's "something may turn up."

Later, the secretary of the local testified generally before the board as to a number of complaints that the local had had to adjust with management during the term of the contract from its execution forward. We find the nature of these complaints most elusive. The representative never suggests a type of grievance requiring the information. Further, it is interesting to note that this representative demanding the information had no idea whether his local office was keeping the classified detailed information supplied by the company upon the occasion of each new addition to the payroll.

Assuming the right to complete payroll information under some circumstances for purposes of "intelligent administration" of the agreement, it perhaps could be that a bona fide assertion that a substantial number of employees were not getting their minimum rates would justify a request for payroll information on all of the employees. Moreover, poor observance in general by management of the terms of

an agreement might justify a request for payroll information to see if wage contract provisions were being flouted. But the board was told nothing of the employee grievances which the representative said he had for his attention. Further, the representative had no idea whether the serious grievances (character unknown) had been adjusted. Objectively the local request does not seem to meet a test of reasonable usefulness, and there is no showing of anything in the subjective minds of the parties showing need.

We cannot believe that if any serious violations of an agreement are going on that they will customarily remain wholly unknown. There will ordinarily be the necessary inkling and evidence to justify the request for specific information as to a specific individual and the grounds suggesting an immediate need for information for all also will rear themselves.

Our appraisal of this record is that the claim of unfair practice, when closely analyzed, condenses to no more than, "Well, we might find something." If we are correct in that analysis of the nature of the claim, then we are confident of our conclusion that there was no unfair labor practice.

If the complainant is entitled to information highly personal to employees, we think the lesson is in *N. L. R. B.* v. *Truitt,* supra, and in *N. L. R. B.* v. *American National Insurance Co.,* 343 U. S. 395, that there must under all of the circumstances be a showing of reasonable need of the information to meet a condition. If the reason is not obvious, then he who asserts the claim should demonstrate to him against whom it is asserted some relevant particularity.

We do hold that the information does not have to be produced on a "Well, we want it" or "It is a handy thing to have around" basis.

The contention of Woolworth that here was a dispute subject to arbitration, we find to be without merit.

The petition for enforcement will be denied. The board's order must be set aside.

(Endorsed:) Opinion. Filed June 25, 1956.

PAUL P. O'BRIEN, *Clerk.*

APPENDIX "A"

"AGREEMENT

"This Agreement, made and entered into this 11th day of March, 1952, by and between the F. W. Woolworth Co. Store No. 433—San Bernardino, California, hereinafter referred to as the Employer and Retail Clerks' Union, Local 1167, AFL, affiliated with the Retail Clerks' International Association, hereinafter referred to as the Union.

"Witnesseth:

"The Employer and the Union agree as follows:

"SECTION 1. Recognition and Jurisdiction. The employer recognizes the Union as the sole collective bargaining agency for all employees except and excluding the manager, assistant manager, learner, fountain manager, fountain trainee, personnel supervisor, office supervisor, stockroom supervisor, floor supervisors, and all other supervisors as defined in the Act.

"SECTION 2. Union Membership. The Employer may select and employ without restriction; however, all new employees who are covered by this agreement shall become members of the Union within thirty-one (31) days from hiring in date. All employees covered by this Agreement who are now mem-

bers or who become members of the Union shall maintain membership in the Union as a condition of continued employment, subject to the provisions of the Labor-Management Relations Act, 1947.

"SECTION 3. Discrimination. There shall be no discrimination against any employee because of membership or non-membership in the Union.

"SECTION 4. Employee Work Week. The straight time work week shall consist of five (5) days of not more than seven (7) hours and fifteen (15) minutes each and one-half (½) day of not more than four (4) hours. The overtime rate of pay shall be one and one-half (1½) times the employee's straight time rate of pay and shall apply:

"(a) For all work in excess of seven (7) hours and fifteen (15) minutes in any one day.

"(b) For all work in excess of four (4) hours on employee's half-day. The short day a. m. shift shall be completed by 2:00 p. m. The short day p. m. shift shall be started not earlier than 1:00 p. m.

"(c) For all work in excess of forty (40) hours in any one week, except that for a total of four (4) weeks in a calendar year the Employer may work employees on a six (6) day, forty-eight (48) hour straight time work week, with the overtime rate of pay applying after eight (8) hours in any one day and forty-eight (48) hours in any one week.

"SECTION 5. Wages. (a) The basic minimum wage rates for male and female employees shall not be less than: 1st 1,040 hours' comparable experience: $.80 per hour; 2nd 1,040 hours' comparable experience: $.875 per hour; Thereafter: $.95 per hour.

"(b) Except that enrolled students may be employed at: 1st 1,040 hours' comparable experience: $.70 per hour; 2nd 1,040 hours' comparable experience: $.75 per hour; Thereafter: $.80 per hour.

"(c) No employee shall suffer a reduction in wage rate on account of the signing of this agreement.

"(d) Employees working less than the full straight time work week shall receive an hourly rate of pay based upon the classification in which they fall, by taking into consideration the experience of the individual employee.

"SECTION 6. Regular Employee. Any employee working sixty (60%) per cent or more of the straight time work week and who has been in the continuous service of the Employer for at least 520 hours shall be considered a regular employee. A total lapse of service of sixty (60) work days or less per calendar year shall not break continuity of service for the purpose of this agreement.

"SECTION 7. Holidays. (a) Regular employees shall be allowed the following holidays without any deduction in pay, providing, they work the normal work days preceding and following the holidays, or if absence is with express permission of the Employer or due to bonafide illness: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. All work performed by regular employees on any of the above holidays shall be compensated for at double time, same to include holiday pay. When any of said holidays fall on a Sunday the following Monday shall be considered the holiday for the purpose of this provision.

"(b) Four and one-half (4½) days shall constitute a normal straight time work week for regular full-time employees in any week in which a recognized holiday falls. However, in the case of such employees whose scheduled short day falls on a recognized holiday they may be required to work the other five days in such week without payment of overtime, provided they are allowed a compensating short day without

loss of pay in the week preceding or the week following such holiday.

"SECTION 8. Vacations. (a) Regular employees shall be entitled to vacation with pay on the following basis: After six (6) months' continuous service—one (1) week; After one (1) year's continuous service—two (2) weeks; After five (5) years' continuous service—three (3) weeks.

"(b) No employee shall be entitled to more than two (2) weeks' vacation within a calendar year until after having completed five (5) full years of service.

"(c) The Employer shall arrange vacation dates, giving due consideration to employee's length of service.

"(d) The vacation period shall be from May 1st to October 1st, or at other times at the discretion of the Employer.

"(e) When a holiday as provided in this agreement falls within an employee's paid vacation, such employee shall receive an additional day's vacation with pay or pay in lieu thereof at the option of the Employer.

"(f) After six (6) months' continuous service any regular employee who resigns or is laid off shall receive accrued vacation pay in accordance with the above provisions.

"SECTION 9. Rest Periods. The Employer shall authorize employees to take rest periods on the following basis:

"When the employees work more than two (2) hours and up to six (6) hours in a day they shall be entitled to ten (10) minutes' rest time without loss of pay.

"When employees work more than six (6) hours in a day they shall be entitled to twenty (20) minutes' rest period time without loss of pay.

"The Employer shall set the time for rest periods.

"SECTION 10. Leaves of Absence. Leaves of absence shall be granted at the discretion of the Employer. Applications for and the granting of leaves of absence shall be in writing, with departure and return dates specified.

"SECTION 11. Uniforms. Where the Employer requires the employees to wear uniforms or aprons the Employer shall furnish same and pay for the laundering or cleaning.

"SECTION 12. Contributions. All contributions to charity shall be voluntary.

"SECTION 13. Layoffs and Rehires. When merit and ability are equal, length of service shall be recognized when it is necessary to lay off or rehire regular employees.

"SECTION 14. Meal Periods. No employee shall be required to work more than five (5) consecutive hours after reporting for work without an uninterrupted meal period of not less than thirty (30) minutes and not more than sixty (60) minutes.

"SECTION 15. No sales or office employees shall be required to do heavy janitorial work.

"SECTION 16. Cooperation. Any privileges or benefits not contrary to company policy now being enjoyed by the employees shall be continued and, in consideration therefor, the Union shall encourage its members to give prompt and courteous service to customers and the Union shall urge its members to use proper care in handling wrapping materials, merchandise, and equipment to prevent damage, soilage, or any loss to the store.

"SECTION 17. Management Functions. The management of the store and the direction of the store personnel, including, but not limited to, the right to hire, suspend, layoff, dismiss, discipline, transfer, pro-

mote, or the establishment of working schedules, training methods and the assignment of employees to jobs, to adopt or remove incentive or bonus systems, to adjust wage rates above those contained in this agreement, and other management functions not specifically mentioned herein, are exclusive responsibilities of the Employer.

"SECTION 18. Cause for Discharge. The Employer may discharge any employee for dishonesty, unseemly conduct, insubordination, incompetency, neglect of duty, failure to perform work as required, and for not observing posted rules. The Employer shall be the sole judge of the competency and efficiency of all employees, and the continuity of employment shall be based entirely upon the Employer's judgment of the merit and ability of the individual employee. A discharged employee shall be entitled to a fair hearing on request.

"SECTION 19. Disputes. When a dispute arises as to the correct interpretation or application of any provision of this agreement, it shall be referred to a representative of the Union and the store manager. These two, after investigation, shall attempt to settle such disputes. In the event these two cannot agree, they shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbiters, one of which shall be selected by the process of elimination. Then the dispute shall be reduced to writing and submitted to the arbiter who shall decide the matter. The decision of the arbiter, within the scope of the submission, shall be final and binding on the parties hereto. The expense of any proceeding provided for herein shall be borne equally by the Employer and the Union.

"SECTION 20. No Lockouts, No Strikes. There shall be no lockouts, no work stoppages, no strikes affecting the employees covered by this agreement.

"SECTION 21. Term of Agreement. (a) All terms and conditions of this agreement shall become effective the first Saturday following date of signing and shall remain in full force and effect to and including March 5, 1954, except as hereinafter provided.

"(b) Cost-of-Living Adjustment—On March 7, 1953, the basic minimum wage rates only as contained in Section 5, subsections (a) and (b) of this agreement shall be adjusted percentagewise to at least the per cent of change in the National BLS Index during the period of February 1, 1952 and February 1, 1953.

"Example: Assume that the "new" Consumers Price Index of the Bureau of Labor Statistics increases five per cent (5%) in the specified period the said hourly rates of pay shall be increased no less than five per cent (5%). A larger adjustment in the hourly rates may be made by mutual agreement between the parties.

"This contract supersedes any and all agreements, oral or written, heretofore entered into between the parties, except the transmittal letter accompanying this document.

"For the Employer:

/s/ E. F. PECK,
Store Manager.

"For the Union:

/s/ TED PHILLIPS,
Sec.-Treas. Local 1167."

2. Judgment of the Court of Appeals

United States Court of Appeals for the Ninth Circuit

No. 14577

National Labor Relations Board, petitioner

v.

F. W. Woolworth Company, respondent

Decree

Petition of the National Labor Relations Board to enforce its order dated July 24, 1954,

This petition to enforce came on to be heard on the Transcript of the Record from the National Labor Relations Board, and on oral argument of respective parties, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that enforcement of the Board's order of July 20, 1954, against Respondent herein, be, and it hereby is, denied, and the order is set aside.

(Endorsed:) Decree filed and entered June 25, 1956.

Paul P. O'Brien, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1956